

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5013 of 1984

Date of decision: 2-8-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BABUBHAI K PATEL

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI for Petitioner

Mr. N. N. Pandya for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner who is holding the post of Agriculture Supervisor in the office of the Director of Agriculture has filed this special civil application challenging his supersession in the matter of promotion made in the year 1984 to the post of Agriculture Officer. It is not in dispute that the criterion for promotion was proved merit and efficiency. It is also not in dispute that the petitioner's case was considered by the departmental promotion committee, but he was not adjudged suitable. The petitioner had made representation against his supersession and that representation has been decided by the respondents and the result thereof was communicated to the petitioner vide letter dated 10th September, 1984 stating the reason that after considering his annual confidential report the Departmental Promotion Committee did not consider him suitable for promotion. The Departmental Promotion Committee has taken into consideration the service record of the petitioner for the year 1978-79 to 1982-83.

2. The counsel for the petitioner contended that the service record of the petitioner was not adverse and as such he could not have been superseded. I do not find any substance in this contention. When the criterion for promotion was proved merit and efficiency, comparative merit has to be assessed and even if the petitioner has average service record he may be superseded by his juniors having comparatively meritorious record. It is a case of promotion after making assessment of the comparative merits. The matter would have been different if the criterion for promotion would have been seniority cum merit where even average record would have been sufficient for claiming promotion to the higher post.

3. This court sitting under Article 226 of the Constitution of India has very limited judicial power to review the recommendation made by the Departmental Promotion Committee. The petitioner has not come up with any case of mala fide against the members of the Departmental Promotion Committee. This court will not sit as an appellate court over the recommendations made by the Departmental Promotion Committee. Taking into consideration the totality of the facts I do not find any illegality in the recommendation of the Departmental Promotion Committee regarding supersession of the petitioner.

4. In the result the special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier by this court stands vacated. No

order as to costs.

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